

BEFORE THE SOUTH CAROLINA  
DEPARTMENT OF INSURANCE

## SELF-FUNDED RATES FOR THE WORKERS' COMPENSATION ASSIGNED RISK PLAN

It is essential for maintaining the viability of the assigned risk plan to establish and maintain rates at a level which permits the plan to operate as a self-funded mechanism. The plan administrator shall maintain necessary rate making data in order to permit the actuarial determination of rates and rating plans appropriate for the business insured through the plan. All assigned carriers shall report their experience on business written under the plan to the plan administrator in a format prescribed by the plan administrator. The plan administrator shall monitor rate adequacy and plan results and shall notify the director of the Department of Insurance in the event that excessive losses are indicated so as to enable the director to take corrective action.

I find and conclude that the current predicament of assigned risk servicing carriers alluded to by several witnesses is not without redress. NCCI may file for new assigned risk rates and provide newer data which might substantiate the request for a rate increase. *I also note that S.C. Code Ann. §38-73-540(C) provides an alternate and flexible remedy.* Under that section, assigned risk carriers shall report their experience to the plan

administrator who shall notify the Department to enable the director of the Department to take corrective action, if necessary. *Nothing in this ruling precludes the servicing carriers from have their rate needs addressed in this way. (Emphasis added).*

Under S.C. Code Ann. § 38-73-540(C), the plan administrator is required to monitor rate adequacy and plan results, and is required to notify the director of the Department of Insurance in the event that excessive losses are indicated so as to enable the director to take corrective action. In recognition of the recent changes enacted by S. C. Code Ann. § 38-73-540(C), which mandate that assigned risk rates be self-funded, I find and conclude that it is equitable that the loss costs decrease of a -10.4% be applied only to the voluntary program until such time when either an amended NCCI filing is submitted *or a corrective action granted.* (Emphasis added).

Judge Kittrell's opinion recognized the authority of this Department to take corrective action pursuant to § 38-73-540(C) upon notice from the Plan Administrator that excessive losses exist within the assigned risk plan.

On November 10, 2004, the National Council on Compensation Insurance, as the Plan Administrator, forwarded to the Department notice that the assigned risk plan was experiencing excessive losses. That Notice is attached to this Order as Exhibit B.

Department staff has reviewed the notice and other e and other supporting data received from the Plan Administrator and consulted with the Consumer Advocate, I hereby conclude that corrective action is necessary to ensure that the assigned risk plan is self-funded and self-sustaining in accordance with the requirements of § 38-73-540(C).

IT IS THEREFORE ORDERED that as mandated by S.C. Code Ann. § 38-73-540(C) that the Plan Administrator calculate revised rates and rating values for South Carolina's Workers Compensation Assigned Risk Plan. These new rates shall be effective February 15, 2005 for new and renewal policies reflecting an overall average increase of 32.8% for the industrial classes.

IT IS FURTHER ORDERED that in calculating the revised rates and rating values for South Carolina's assigned risk market, a loss cost multiplier of 2.176 be applied to the South Carolina voluntary market loss costs effective July 1, 2004.

IT IS FURTHER ORDERED that in calculating the revised rates and rating values for South Carolina's assigned risk market, the loss cost multiplier of 2.176 should reflect an overall average increase of 11.3% to the current assigned risk market expense level in effect since December 1, 2001.

IT IS FURTHER ORDERED that in calculating the revised rates and rating values for South Carolina's assigned risk plan, the overall average increase of 11.3% to the current assigned risk market expense level should reflect \$500,000 for fraud prevention.

IT IS FURTHER ORDERED that in calculating the revised rates and rating values for South Carolina's assigned risk plan, the loss cost multiplier of 2.176 should reflect an overall decrease of 11.3% to current assigned risk differential.

IT IS FURTHER ORDERED that NCCI take the other action(s) outlined in Exhibit B result in rates for the assigned risk plan that are self-sustaining and are not inadequate, excessive or unfairly discriminatory.

AND IT IS SO ORDERED.

  
Gwendolyn Fuller McGriff  
Co-Acting Director  
South Carolina Department of Insurance

December 15, 2004 at  
Columbia, South Carolina



National  
Council on  
Compensation  
Insurance, Inc.

November 10, 2004

Ms. Gwen Fuller McGriff  
Deputy Director  
South Carolina Insurance Department  
Division of Financial Services  
Office Of Actuarial Services  
300 Arbor Lake Drive, Suite 1200  
Columbia, South Carolina 29223

Mr. Dean Kruger  
Property & Casualty Chief  
South Carolina Insurance Department  
300 Arbor Lake Drive, Suite 1200  
Columbia, South Carolina 29223

Re: South Carolina Assigned Risk Corrective Action

Dear Ms. McGriff and Mr. Kruger:

In Dennis Kokulak's absence, I am writing to you today. We have met with our actuaries and instructed them to begin running rates; however, it is felt this letter remains necessary to clarify and bring this issue to closure before rates are presented to the Insurance Department.

I am providing, pursuant to Title 38, Chapter 73, Section 540 (c) of the South Carolina Code of Laws, by the National Council on Compensation Insurance Inc., ("NCCI") as plan administrator of the South Carolina Assigned Risk Plan, a formal notice that excessive losses are indicated in the South Carolina Assigned Risk Plan and as such are jeopardizing the ability of the plan to operate as a self-funded mechanism.

You have requested NCCI to summarize the discussions and information between the Plan Administrator and the Department of Insurance regarding the Department's taking the necessary corrective action.

The summary is as follows:

- NCCI has not filed a change or notice of change to South Carolina's assigned risk rates and rating values since the current assigned risk rate level was approved effective December 1, 2001.
- NCCI calculated the expenses underlying the revised South Carolina assigned risk rates and rating values to be \$1,503,336.00 as broken down in the supplemental document.
- It is recognized that under South Carolina Code Ann. 38-73-540(c), the Plan Administrator is required to monitor rate adequacy and Plan results, and is required to notify the Director of the Department of Insurance in the event that excessive losses are indicated so as to enable the Director to take corrective action. It is also recognized that the Department of Insurance has determined that South Carolina Code Ann. 38-73-540(c) allows for the Department of Insurance to address assigned risk rates in South Carolina.

Ms. Gwen Fuller McGriff  
Deputy Director  
South Carolina Insurance Department  
November 10, 2004  
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Mr. Dean Kruger  
Property & Casualty Chief  
South Carolina Insurance Department

- To achieve self-funded assigned risk rates, as mandated by South Carolina Code Ann. 38-73-540(c), that NCCI calculate revised rates and rating values for South Carolina's assigned risk market with an effective date of 12:01 a.m., January 1, 2005 for new and renewal policies reflecting an overall average increase of 32.8% for the industrial classes.
- That in calculating the revised rates and rating values for South Carolina's assigned risk market, a loss cost multiplier of 2.176 be applied to the South Carolina voluntary market loss costs effective July 1, 2004.
- That in calculating the revised rates and rating values for South Carolina's assigned risk market, the loss cost multiplier of 2.176 should reflect an overall average increase of 11.3% to the current assigned risk market expense level in effect since December 1, 2001.
- That in calculating the revised rates and rating values for South Carolina's assigned risk market, the overall average increase of 11.3% to the current assigned risk market expense level should reflect \$500,000 for Fraud Prevention, as requested by the South Carolina Department of Insurance.
- That the South Carolina Department of Insurance should direct the activities incurred under such Fraud Prevention expense item.
- That in calculating the revised rates and rating values for South Carolina's assigned risk market, the loss cost multiplier of 2.176 should reflect an overall decrease of 11.3% to current assigned risk differential.

Accordingly, NCCI requests that the South Carolina Department of Insurance take corrective action in accordance with and pursuant to Title 38, Chapter 73, Section 540 (c) of the South Carolina Code of Laws. In addition, I would like you to review, sign, and return the supplemental letter to Dennis Kokulak. In the event you require additional information please do not hesitate to contact me.

Thank you for all of your assistance up to this point.

Sincerely,

*Peter M. Burton*

Peter M. Burton  
Senior Division Executive – State Relations

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND ) BEFORE THE CHIEF INSURANCE COMMISSIONER

IN THE MATTER OF: )

WORKERS' COMPENSATION RATE FILINGS )  
\_\_\_\_\_ )

ORDER  
DOCKET NO. 90-003

This matter comes before me pursuant to the provisions of Section 38-73-1430, Code of Laws of South Carolina, (1976, as amended). On January 5, 1990, I issued a NOTICE OF PUBLIC HEARING, announcing that a public hearing would be held on Monday, February 12, 1990, at 10:30 a.m., at the Offices of the South Carolina Department of Insurance, for the purpose of receiving comments from interested persons regarding the extension of the provisions of Sections 38-73-1370, 38-73-1380, 38-73-1400 and 38-73-1410 to Workers' Compensation insurance.

At that public hearing, I received testimony from interested persons regarding this matter including representatives of the National Council on Compensation Insurance, the insurance industry, the Office of the South Carolina Consumer Advocate and the South Carolina Department of Insurance. In addition, following the public hearing, I left the record open for one week in order to allow interested parties to file written comments with me regarding this matter.

It is noted that Section 38-73-1430 provides the following:

"...After June 30, 1989, the commissioner  
may extend the provisions of Sections

38-73-1370, 38-73-1380, 38-73-1400, and 38-73-1410 to other lines of property and casualty insurance, by order, after public hearing, when the determination is made that to do so is in the public interest."

It is also noted that Section 38-73-510 requires each Workers' Compensation insurer to be a member of a "non-partisan rating bureau." Historically, that rating bureau has been the National Council on Compensation Insurance. Currently, all Workers' Compensation insurers are required to utilize uniform rates; those which had been filed by the National Council on Compensation Insurance and approved by the Chief Insurance Commissioner. Also, pursuant to Section 38-73-520 and other provisions of statute, Workers' Compensation insurers are permitted to utilize modifications from these rates upon the approval of the Chief Insurance Commissioner. Additionally, Section 38-73-540 permits Workers' Compensation insurers to establish a mechanism to afford Workers' Compensation insurance to risks unable to procure such insurance through ordinary methods. The mechanism created pursuant to this statute is referred to as the Assigned Risk Plan.

Having reviewed the testimony and the written comments presented at the public hearing held on February 12, 1990, and the written comments contained within the Docket File submitted after the public hearing, I hereby conclude that it is in the public interest to extend the provisions of Sections 38-73-1370,

38-73-1380, 38-73-1400 and 38-73-1410 to Workers' Compensation insurance, a line of property and casualty insurance. I make this determination based on the opinion that the extension of these statutory provisions to Workers' Compensation insurance will better assure that the rates utilized by individual Workers' Compensation insurers are neither "inadequate, excessive, nor unfairly discriminatory." It is, therefore,

ORDERED that the provisions of Sections 38-73-1370, 38-73-1380, 38-73-1400 and 38-73-1410 are extended to Workers' Compensation insurance. It is,

FURTHER ORDERED that the public hearing scheduled for March 30, 1990, concerning a revision in Workers' Compensation rates filed by the National Council on Compensation Insurance shall be held as scheduled; provided, however, the filing shall conform to the requirements of Sections 38-73-1370, 38-73-1380, 38-73-1400 and 38-73-1410. It is,

FURTHER ORDERED that the National Council on Compensation Insurance shall include in that filing a proposed "pure loss component" for both its members and the Assigned Risk Plan. That "pure loss component" shall be identical and based on the same experience. Provided, however, the trending methodology for the Assigned Risk Plan "pure loss component" shall be based on the experience of the Assigned Risk Plan. It is,

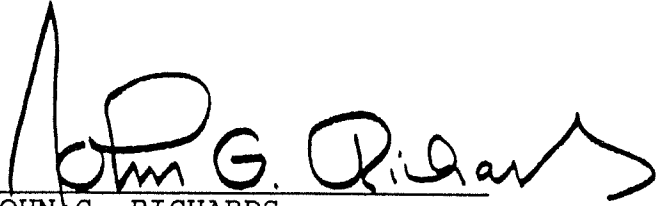
FURTHER ORDERED that the National Council on Compensation Insurance shall also file a proposed "expense component" for the Assigned Risk Plan reflecting the cost of the Assigned Risk Plan only, which, when approved, will be added to



the approved "pure loss component" for the Assigned Risk Plan to become the "final rate" for the Plan. It is,

FURTHER ORDERED that Workers' Compensation insurance written by an insurer on behalf of the Assigned Risk Plan shall not be included in the determination of whether an insurer "equaled or exceeded 1% of the total written Workers' Compensation insurance premium in this State during the previous calendar year."

Soon after I sign this Order, the Department of Insurance will issue a Bulletin setting forth procedures to be utilized by insurers of Workers' Compensation insurance for filings made pursuant to the provisions of Sections 38-73-1370, 38-73-1380, 38-73-1400 and 38-73-1410.



JOHN G. RICHARDS  
Chief Insurance Commissioner  
State of South Carolina

March 1, 1990, at  
Columbia, South Carolina.